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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

No.....

PANAMA REFINING COMPANY et al.,
Petitioners,

vs.

A. D. RYAN, S. D. BENNETT, and J. HOWARD MARSHALL,
Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

THE OPINIONS OF THE COURTS BELOW

The opinion in the district court is reported in Amazon Petroleum Corporation et al. vs. Railroad Commission of Texas et al., and Panama Refining Com-

pany et al. vs. Ryan et al., 5 Fed. Sup. 639. The opinion of the United States Circuit Court of Appeals, entitled Archie D. Ryan et al. vs. Amazon Petroleum Corporation et al., which is dated May 22nd, 1934, is not yet officially reported, but is fully set out in the record.

II.

JURISDICTION

1. The date of the decree of the United States Circuit Court of Appeals, sought to be reviewed, is May 22nd, 1934.

2. Petitioners assert: (a) that Subsection 9(c) of the National Industrial Recovery Act is repugnant to Article I, Section I of the Constitution of the United States, in that Congress has thereby delegated to the President the power of legislation; (b) that Regulations IV, V, and VII promulgated by Harold L. Ickes, who was appointed by the President to enforce the provisions of Subsection 9(c), which regulations were being enforced against petitioners by respondents, are void for the reason that they are not authorized by Subsection 9(c) or any other provision of the National Industrial Recovery Act; (c) that petitioners may not be subjected to criminal prosecution for the imprisonment and penalties provided in Subsection 9(c) and the regulations, for they, as producers and refiners

of petroleum, are not included within the terms of the Act of Congress, and the things required of them by the regulations are not required by the Act of Congress.

3. The jurisdiction of the Supreme Court is invoked under Section 240 of the Judicial Code, as amended by the Acts of February 13, 1925, and upon the further ground that the decision of the United States Circuit Court of Appeals, in holding that Subsection 9(c) of the National Industrial Recovery Act is not an unconstitutional delegation of legislative power to the President, is in conflict with the principles announced by this court in Field vs. Clark, 143 U. S. 649; Buttfield vs. Stranahan, 192 U. S. 470; Union Bridge Company vs. United States, 204 U. S. 365; St. Louis & Iron Mountain Ry. Co. vs. Taylor, 210 U. S. 283; and Mutual Film Corporation vs. Industrial Commission of Ohio, 236 U. S. 230.

III.

STATEMENT OF THE CASE

As is shown by the opinions of the district and circuit courts, this case, while tried separate from that of Amazon Petroleum Corporation et al. vs. Lon A. Smith et al., yet, in disposing of both cases, both the district and circuit courts entered but one opinion, which is applicable to both cases as the Federal questions raised

in the Amazon case are identical with those raised in this case, with the exception that in the Amazon case an attack was made upon Article III, Section 4 of the Code of Fair Competition for the Petroleum Industry promulgated by the President under the provisions of the National Industrial Recovery Act. That question is not involved in this case, and, therefore, the holding of the district and circuit courts, in so far as same applied to the Petroleum Code, is not involved in this case.

The Panama Refining Company, which is a refiner of crude petroleum, joined by A. F. Anding, who is a producer of petroleum, brought this suit to restrain respondents from prosecuting them for their refusal to furnish verified daily reports as to the production, sale, and disposition of oil by the producer, and the purchase, transportation, storage, refining, and disposition of the products thereof by the refiner, as required by the attacked regulations. Regulation IV applies to the producer, and Regulation V applies to the refiner. They also attacked Regulation VII, which required the keeping of books by each of them as to their production, storage, transportation, purchase, sale, and refining of petroleum and for the inspection thereof by respondents. Petitioners failed and refused to comply with these regulations and criminal prosecution was instituted against them because of having failed to comply with said regulations. Respondents,

under the assertion of power as incident to their authority to enforce the attacked regulations, also went upon the property of petitioners, over their objections, gauged their tanks, examined their property, and dug up their pipe lines, which resulted in the destruction of the same. Relief against such trespasses was also prayed for.

The district court found as a fact that petitioners were not engaged in interstate commerce, and concluded that they were not subject to the operation of Subsection 9(c) of the National Industrial Recovery Act, and, therefore, the attacked regulations were not enforceable against them, and, accordingly, granted petitioners the injunctive relief prayed for. He concluded that it was unnecessary to pass upon the validity of Subsection 9(c), although that question was raised by petitioners. This decree was reversed by the United States Circuit Court of Appeals and petitioners' bill of complaint ordered dismissed.

IV.

POINTS RELIED UPON FOR REVERSAL

POINT A

The United States Circuit Court of Appeals erred in holding that Subsection 9(c) of the National Industrial Recovery Act is a valid act of Congress.

POINT B

Said court erred in holding that Regulations IV, V, and VII, promulgated by Harold L. Ickes for the purpose of enforcing said act, are valid and enforceable against petitioners who are not engaged in interstate commerce.

POINT C

Said court erred in holding that petitioners may be subjected to criminal prosecution for failure to comply with the attacked regulations.

V.

ARGUMENT

For the convenience of the court, we here set out Subsection 9(c) of the National Industrial Recovery Act, which is as follows, to-wit:

> "The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized

agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both."

Regulations IV, V, and VII complained of, which were promulgated under the purported authority of the National Industrial Recovery Act for the purpose of enforcing the above quoted subsection of said act, are quite lengthy; therefore, we will only state the substance of them here. However, they are set out in full in petitioners' bill of complaint. Regulation IV requires that every producer of oil shall file with the Division of Investigation of the Department of the Interior every thirty days or more often, if required, a sworn report showing the number of barrels of petroleum produced since the last report, the property from which produced, giving the location of the wells, the amount and to whom the same was disposed of, and the amount still on hand. Said report shall contain a statement under oath that the amount of oil so produced by the producer was not produced in violation of any law or regulation of any agency of the state in which the same is produced. Regulation V provides that every refiner and other purchaser of oil shall file daily sworn reports with said agency, showing the amount of oil purchased and from whom purchased, the location of the well from which it was

produced, and the disposition of the oil so purchased, and shall contain the further statement that said oil so purchased was not produced in violation of any state law or rule or regulation of any agency of the state. Regulation VII provides that every person subject to the operation of Subsection 9(c) of the National Industrial Recovery Act shall keep open for the inspection of the agents of the Division of Investigation, Department of the Interior, adequate books and records of all transactions with reference to the production, purchase, transportation, storage, and refining of oil. Each of these regulations provides that the failure to comply with same subjects the offender to imprisonment for not more than six months and to a fine of not more than $1000.00 or both, which is the penalty prescribed by Subsection 9(c) for violation of any order made by the President under said subsection. There have been no regulations promulgated purporting to authorize the respondents to go upon petitioners' property and gauge their tanks and dig up their pipe lines and otherwise inspect the same, but this authority is asserted by respondents as incident to the right to enforce the attacked regulations.

POINT A

Subsection 9(c) of the National Industrial Recovery Act is an unconstitutional delegation of legislative power to the President, for the reason that it does not

manifest the policy or will of Congress upon the question of the prohibition of the movement in interstate and foreign commerce of petroleum or its products produced or withdrawn from storage in violation of a state law or regulation. Whether these commodities are to move freely in such commerce or be prohibited therefrom, is left entirely to the discretion and will of the President. In the cases hereinafter cited, in which acts of Congress were attacked on the ground of unconstitutional delegation of legislative power, which, however, were sustained by this court, the acts manifested the policy or will of Congress with reference to the subject regulated and left to the discretion of the executive department only the matter of filling in details or the finding of facts, upon the ascertainment of which the will of Congress then became effective; and in each case it was pointed out by this court that Congress had legislated on the subject as far as was reasonably practical and from the necessities of the case was compelled to leave to the executive officials the duty of bringing about the result pointed out by the statute.

Field vs. Clark, 143 U. S. 649;

Buttfield vs. Stranahan, 192 U. S. 470;

Union Bridge Company vs. United States, 204 U. S. 365;

St. Louis & Iron Mountain Ry. Co. vs. Taylor, 210 U. S. 283;

Mutual Film Corporation vs. Industrial Commission of Ohio, 236 U. S. 230.

In the act under consideration, there is nothing involving any fact finding or happening of any contingency upon which the will of Congress is to become effective. The act, when it left the hands of Congress, was not full and complete and capable of enforcement as its act, but remained as a mere nullity until life was breathed into it from an unconstitutional source by the President exercising his discretion to prohibit the movement in commerce of the commodities referred to therein. If he had elected not to prohibit the movement of such commodities in commerce, such commodities would still be free and untrammelled subjects of interstate and foreign commerce, notwithstanding the act of Congress. It therefore follows that the prohibition of the movement of these commodities in interstate commerce results from the discretion and action of the President, and, consequently, the Act of Congress authorizing the President to effect such prohibition in commerce at his discretion, is repugnant to Article I, Section I of the Constitution, and is void.

POINT B

If Subsection 9(c) of the National Industrial Recovery Act was valid, nevertheless, Regulations IV, V, and

VII are not authorized thereby nor enforceable against petitioners, who are engaged only in intrastate commerce, for petitioners, as producers and refiners of petroleum, are not included within the terms or reasonable intendment of the act, and the things required of petitioners by the regulations complained of are not required by the act. Therefore, the effect of the regulations is to extend the scope of the act beyond its terms, which is legislation and not administration, and they are therefore void.

United States vs. Eaton, 144 U. S. 677;

United States vs. United Verde Copper Co., 196 U. S. 207;

Williamson vs. United States, 207 U. S. 425;

United States vs. Grimaud, 20 U. S. 518;

United States vs. George, 228 U. S. 15;

United States vs. 11,150 Pounds of Butter, 195 Fed. (C. C. A.) 663.

POINT C

Conceding that the attacked regulations are authorized by Section 10(a) of the National Industrial Recovery Act, wherein it is provided that the President is authorized to make all rules and regulations necessary to carry out the purposes of the act, yet a general

grant of authority to make rules and regulations for the purpose of carrying out the terms of an act is not sufficient authority to subject one to criminal procedure for violating such a regulation.

United States vs. Eaton, 144 U. S. 677;

United States vs. 11,150 Pounds of Butter, 195 Fed. (C. C. A.) 663;

United States vs. Lacher, 134 U. S. 624;

Todd vs. United States, 158 U. S. 282;

Fasulo vs. United States, 272 U. S. 620;

Donnelly vs. United States, 276 U. S. 512.

CONCLUSION

It is, therefore, respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers, in order that the petitioners may have the relief awarded them by the district court, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the United States Circuit Court of Appeals and finally reverse it.

F. W. FISCHER,
Tyler, Texas,
Counsel for Petitioners.